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<b>CARRIE M. McBRIDE, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-163</b>
	)	<b>Issued: March 3, 2004</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>San Jose, CA, Employer</b>	)	
	)	

*Mark S. Coby, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

## JURISDICTION

On October 22, 2003 appellant filed a timely appeal of an Office of Workers' Compensation Programs' decision dated August 8, 2003 which denied merit review. Because more than one year elapsed between the last merit decision of the Office dated June 12, 2002 and the filing of this appeal on October 22, 2003, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

**ISSUE**

The issue is whether the Office properly refused to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

### **FACTUAL HISTORY**

In this case, the Office accepted appellant's May 18, 1992 claim for bilateral shoulder rotator cuff tear with surgical repair, right ulnar neuropathy with surgical compression, and bilateral carpal tunnel syndrome with surgical releases. Appellant

returned to work in February 1997 in a modified capacity as a general clerk and ultimately retired from the employing establishment on September 19, 1998. The Board, in a decision dated January 22, 2002, affirmed the Office's March 15, 2000 decision denying appellant's claim for disability compensation from March 1, 1999 to March 15, 2000. The law and the facts as set forth in the Board's January 22, 2002 decision are incorporated herein by reference.<sup>1</sup>

On March 6, 2002 appellant filed a request for reconsideration with the Office of its March 15, 2000 decision and submitted a report from Dr. Edward C. Littlejohn, her treating physician and a Board-certified orthopedic surgeon. On June 12, 2002 the Office denied modification of its March 15, 2000 decision on the grounds that Dr. Littlejohn's report failed to establish that appellant's accepted conditions had worsened and thus prevented her from working at her modified position.<sup>2</sup> By letter dated July 16, 2002, appellant requested reconsideration of her claim. On July 31, 2002 the Office denied review of its June 12, 2002 decision on the grounds that appellant submitted no evidence in support of her request.

On May 15, 2003 appellant, through counsel, requested reconsideration "of previous decisions to deny [appellant] previous claims for lost wages due to total disability" and submitted a May 8, 2003 report from Dr. Littlejohn. By decision dated August 8, 2003, the Office denied review of its June 12, 2002 decision on the grounds that the evidence submitted in support of appellant's request for reconsideration was repetitious and cumulative of prior evidence, and that she failed to establish that the Office erroneously applied or misinterpreted a point of law or advance a legal argument not previously considered.

### **LEGAL PRECEDENT**

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>3</sup> The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>4</sup> Section 10.608(b)

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<sup>1</sup> Docket No. 00-1570.

<sup>2</sup> Dr. Littlejohn noted appellant's disabling condition as osteoarthritis of the shoulder, hand and thumb and a torn fibrocartilage of the right wrist. The accepted injuries were bilateral shoulder rotator cuff tear, right ulnar neuropathy, and bilateral carpal tunnel syndrome, all of which were subject to authorized surgical procedures.

<sup>3</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>4</sup> 20 C.F.R. § 10.606(b)(1) and (2) (1999).

provides that, when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review of the merits.<sup>5</sup>

### **ANALYSIS**

The only decision before the Board is the decision of the Office dated August 8, 2003 denying appellant's requests for reconsideration. Since more than one year has elapsed since the date of the Office's last merit decision on June 12, 2002 and the filing of her appeal on October 22, 2003, the Board lacks jurisdiction to review the merits of her claim.

Initially, the Board notes that on March 6, 2002 appellant requested reconsideration with the Office of its March 15, 2000 decision which denied her claim for wage loss.

In her May 15, 2003 request for reconsideration, appellant submitted a May 8, 2003 report from Dr. Littlejohn in which he noted appellant's limited ability to reach with her right arm due to her painful right shoulder arthritis, and her inability to hold objects in her left hand as result of her degenerative left thumb arthritis. This report is not relevant to the issue in this case because the Office did not accept arthritis of the right shoulder or left thumb as work-related injuries. The Board has long held that evidence that does not address the particular issue involved in the claim does not constitute a basis for reopening a case.<sup>6</sup> As appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or submit relevant and pertinent new evidence not previously considered by the Office, she failed to meet any of the regulatory requirements, and thus was not entitled to merit review.

### **CONCLUSION**

The Board finds that the Office properly refused to reopen appellant's claim for merit review.

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<sup>5</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>6</sup> *Edward W. Malaniak*, 51 ECAB 279 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 8, 2003 is affirmed.

Issued: March 3, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member